IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 583 of 2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 19th October, 2006

Heard Mr. C. N. Funde, the learned counsel for the appellants.

2. This appeal is directed against Judgment and decree dated 17.8.2006 passed by the 3rd Ad hoc Additional District Judge, Nagpur in Regular Civil Appeal No. 186/04 dismissing the appeal filed against the Judgment and decree dated 3.3.2004 passed by the Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit no. 329 of 2001. The appellants are the legal representatives of original defendant no. 1 Prabhakar Gawande in the suit filed by the respondent no.1 against said Prabhakar and respondents 2 to 4 who are defendants 2 to 4 in the above suit. The respondent no.1/ plaintiff filed the above suit against the defendants for possession of the suit premises on the ground that he had purchased the suit premises by sale-deed Exh. 45 which was executed in the year 1967 in favour of the plaintiff. According to the plaintiff the defendants were permitted to occupy the suit premises for

their residence. The defendants also claimed title to the suit premises, more particularly, defendant no.4 claimed that his father and thereafter he was residing in the suit premises for more than 20 years and as such he had acquired title by way of adverse possession. The trial Court upon appreciation of the evidence, oral and documentary, led by the parties held that the plaintiff had proved his title and that he had allowed the defendants to occupy the suit premises temporarily for their residence. The trial Court also negatived the defence taken by the defendant no.4 that he has acquired title by adverse possession. In appeal preferred by the appellants herein, the lower appellate Court concurred with the findings given by the trial court and dismissed the appeal. The lower appellate Court held that the plaintiff had proved that he had title to the suit property and that he had permitted the defendants to temporarily reside in the suit premises.

3. Mr. Funde, the learned counsel appearing for the appellants submitted that both the courts below have erred in holding that the appellants have no title to the suit premises. According to the learned counsel for the appellants the appellants are in possession of the suit premises and they have right to occupy the suit premises and both the courts have wrongly held that the plaintiff has title to the suit premises. According to the learned

counsel, the findings recorded by both the courts below are perverse and, therefore, interference is warranted in Second Appeal.

4. Having perused the Judgments of both the courts below and having considered the submissions made by the learned counsel for the appellants I am unable to accept the submissions made on behalf of the appellants. The trial Court, in my opinion, on the basis of the sale-deed and several documents produced by the plaintiff was right in holding that the plaintiff had proved his title. The trial Court was also right in holding that it was the plaintiff who had permitted the defendants to temporarily occupy the suit premises. The finding of the trial court that the defendant had no right to the suit premises cannot also be faulted having regard to the evidence led by the parties. Once, it was established that the plaintiff had title to the suit premises and once the trial court negatived the defence of adverse possession taken by the defendant no.4, the trial court was justified in granting decree of possession and ordering inquiry into mesne profits under section XX Rule 12 of the Code of Civil Procedure. I do not find any perversity in the findings given by the trial Court. Therefore, lower appellate court was justified in dismissing the appeal filed by the appellants. I do not find any substantial question of law involved in the appeal and hence the appeal is

summarily rejected.

C.A. No. 6311/06:

In view of the dismissal of the second appeal, this application has become infructuous. Hence, the application is dismissed as infructuous.

Judge

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